

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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Amalia Madera,

Plaintiff,

19 Civ. 649 (KMK) (AEK)

-against-

**ORDER**

Commissioner of Social Security,

Defendant.  
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**THE HONORABLE ANDREW E. KRAUSE, U.S.M.J.**

A telephone conference is hereby scheduled for **Friday, May 7, 2021 at 2:15 p.m.** to discuss the applicability of the Supreme Court's decision in *Carr v. Saul*, 141 S. Ct. 1352 (2021), to this matter.

In *Carr*, the Supreme Court held that applicants for Social Security disability benefits who had hearings conducted, and/or decisions issued, by an administrative law judge ("ALJ") whose appointment was not in accordance with the Appointments Clause of the U.S. Constitution were not required to administratively exhaust their Appointments Clause challenges during proceedings before the Social Security Administration before raising such challenges for the first time in federal court. Here, Plaintiff's ALJ hearing was conducted, and the ALJ's decision was issued, before the ALJ's appointment was ratified by the Acting Commissioner of Social Security in July 2018. To date, Plaintiff has not raised an Appointments Clause challenge in this federal court proceeding.

In light of the *Carr* decision, and to promote efficiency and judicial economy, the parties are directed to meet and confer regarding whether this case should be remanded to the Commissioner for a new hearing before a constitutionally appointed ALJ different from the ALJ

who previously heard and adjudicated Plaintiff's claim for benefits. Should Plaintiff elect not to request a remand on the Appointments Clause issue at this stage, this may constitute a waiver of the Appointments Clause challenge in all further proceedings, including appeals. A decision not to request a remand will not prejudice the Plaintiff in any way before this Court, nor will it affect the timing of this Court's decision on the pending motions in this matter should the case remain in federal court.


The Court will hear argument on this issue, if necessary, during the May 7, 2021 conference.

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The conference shall be an AT&T teleconference organized by the Chambers of the undersigned. To access the teleconference, please follow these directions: (1) dial the meeting number: (877) 336-1831; (2) enter the access code: 2751700; and (3) press pound (#) to enter the teleconference as a guest. Should counsel experience any technical issues with the teleconferencing system, please contact Chambers at (914) 390-4070.

Dated: April 30, 2021  
White Plains, New York

**SO ORDERED.**

  
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ANDREW E. KRAUSE  
United States Magistrate Judge